

Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

WADE K. MARLER, DDS, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

ASPEN AMERICAN INSURANCE  
COMPANY,

Defendant.

No. 2:20-cv-00616-BJR

STIPULATED MOTION AND  
ORDER ALLOWING PLAINTIFF  
TO RE-PLEAD

Plaintiff Wade K. Marler, DDS and Defendant Aspen American Insurance Company  
stipulate that Plaintiff may file a second-amended complaint in the above-captioned matter.

WHEREAS:

1. On April 22, 2020, Plaintiff filed a complaint to initiate the above-captioned  
action. Dkt. 1. On June 1, 2020, Plaintiff filed an amended complaint. Dkt. 6.

2. On July 1, 2020, Judge Zilly—formerly presiding over this action—stayed  
proceedings pending the ruling of the Judicial Panel on Multidistrict Litigation regarding  
consolidation and transfer of certain actions to the putative *In re COVID-19 Business*

1 *Interruption Insurance Litigation* MDL. Dkt. 10. On August 24, 2020, Judge Zilly lifted the  
2 stay. Dkt. 12.

3 3. On September 9, 2020, Defendant moved to dismiss Plaintiff's lawsuit for  
4 failure to state a claim upon which relief could be granted. Dkt. 15.

5 4. On September 17, 2020, this action was re-assigned to Judge Barbara J.  
6 Rothstein. Dkt. 16.

7 5. Also on September 17, 2020, counsel for Plaintiff and Defendant conferred  
8 telephonically. Plaintiff indicated a desire to amend its complaint a second time.  
9

10 6. On September 21, 2020, Defendant told Plaintiff it would consent to Plaintiff's  
11 request to amend.

12 7. Counsel for Plaintiff and Defendant are also meeting and conferring on  
13 Plaintiff's motion to consolidate for pretrial purposes all insurance coverage proposed class  
14 actions pending in this Court that seek business interruption losses related to COVID-19 and  
15 closure orders. Plaintiff intends to file the motion to consolidate by Friday, September 25,  
16 2020.  
17

18 8. The Parties represent that this stipulated motion is made in the interest of  
19 justice, not to delay the proceedings, and will not prejudice any party.

20 **IT IS HEREBY STIPULATED AND AGREED**, subject to the approval of the Court,  
21 that (1) Defendant's motion to dismiss, Dkt. 15, is hereby stricken as moot; (2) Plaintiff shall  
22 file a second amended complaint no later than October 6, 2020; and (3) Defendant shall have 14  
23 days to answer, move, or otherwise respond to Plaintiff's second amended complaint, exclusive  
24 of the day of filing, unless the Court sets a different schedule.  
25  
26

The Parties respectfully request the Court to enter the accompanying Proposed Order granting the above-articulated stipulated agreement.

DATED this 23rd day of September, 2020.

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By: s/ Ian S. Birk

By: s/ Gretchen Freeman Cappio

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*Attorneys for Defendant Aspen American  
Insurance Company*

**ORDER**

The Court has considered Plaintiff Wade K. Marler, DDS's and Defendant Aspen American Insurance Company's Stipulated Motion and [Proposed] Order Allowing Plaintiff to Re-Plead.

The Court **HEREBY ORDERS** the following:

1. Defendant's motion to dismiss (Dkt. 15) is **STRICKEN AS MOOT**.
2. Plaintiff shall file a second amended complaint by October 6, 2020.
3. Defendant shall have 14 days to answer, move, or otherwise respond to Plaintiff's second amended complaint, exclusive of the day of filing, unless the Court sets a different schedule.

**IT IS SO ORDERED.**

Dated: September 24, 2020.



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Honorable Barbara J. Rothstein  
UNITED STATES DISTRICT JUDGE